Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1996

ULYSSES B. COBB, JIMMY D. DILWORTH, RODNEY L. McGHEE and JIMMY D. RANDOLPH,

Petitioners,

vs.

BURLINGTON NORTHERN RAILROAD COMPANY, INC.,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

CHRISS H. DOSS
Counsel of Record
JAMES W. CAMERON
Attorneys for Petitioners
Suite 850, Beacon Ridge Tower
600 Beacon Parkway West
Birmingham, Alabama 35209
(205) 942-8101

70002 (800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21 Lutz Appellate Services, Inc.

30 pp

QUESTION PRESENTED

Were the Employees denied equal protection under *Batson* because the Railroad excluded the only minority juror under the doctrine of *Purkett*?

LIST OF PARTIES

The names of all parties to the proceedings in the court whose judgment is sought to be reviewed here appear in the caption of the case. There is no parent of susidiary of any part to be listed.

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Petitioners, Ulysses B. Cobb, Rodney L. McGhee, Jimmy D. Dilworth, and Jimmy D. Randolph, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at and is reproduced in the Appendix filed herewith ("App.") at App. A, 1a. The unreported opinions of the District Court in this case are reproduced at App. B, 4a.

STATEMENT OF JURISDICTION

The Court of Appeals entered its judgment on August 29, 1996. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(l).

CONSTITUTIONAL PROVISIONS INVOLVED

1. Fifth Amendment to the United States Constitution.

2. The Equal Protection Provisions provided by the Fourteenth Amendment of the United States Constitution.

STATEMENT OF THE CASE

This appeal concerns four separate Complaints entered by Ulysses B. Cobb, Jimmy D. Dilworth, Rodney L. McGhee, and Jimmy D. Randolph (hereinafter referred to as "Employees") in the United States District Court for the Northern District of Alabama, Southern Division on August 2,1994. The Employees' cases were consolidated for the purpose of discovery and trial of the issues.

The Employees were working for Burlington Northern Railroad Company, Inc. (hereinafter referred to as "Railroad") and were engaged in the furtherance of interstate commerce when they were caused to be injured on January 4, 1993, in an automobile accident at Hickory Flat, Mississippi. Jurisdiction and venue in their matter were brought under Title 45 U. S. C. § 51, *et seq.*, which refers to the Federal Employers' Liability Act.

A trial of these issues was held by the District Court beginning on August 8, 1995, with a jury verdict entered for the Railroad on August 11, 1995.

During jury selection, the Employees' counsel raised a "*Batson*" challenge because the Railroad struck the only minority perspective juror. The court then held a discussion outside the jury where the Railroad's counsel articulated his reason for striking the lone, minority juror. The court found the Railroad's counsel's reason to be nondiscriminatory and the Employees' counsel entered his exception.

On August 11, 1995, the jury returned a verdict in favor of the railroad. The Employees moved for a new trial on August 21, 1995. The District Court denied the motion.

The Employees then moved on appeal concerning the *Batson* challenge and a last minute bifurcation of trial. The bifurcation issue is not before this Court.

On appeal, the Eleventh Circuit affirmed the District Court's finding that the Railroad's counsel articulated a race-neutral reason for his use of a peremptory strike against the sole minority person on the venire citing *Purkett v. Elem,* 115 S. Ct. 1769 (1995). (App. A, 1a).

The Employees now file this Petition for a Writ of Certiorari on the holding of the Eleventh Circuit on the issue: Were the Employees denied equal protection under *Batson* because the Railroad excluded the only minority juror under the doctrine of *Purkett*?

REASONS FOR GRANTING THE WRIT

This Court should grant the writ in order to clarify the meaning and intent of *Purkett v. Elem*, 115 S. Ct. 1769, and its application to *Batson v. Kentucky*, 106 S. Ct. 1769.

Since its genesis, *Batson* maintained a balance as to a party's right to challenge the striking of a juror for reasons which may be race-neutral.

However, in *Purkett* the court moved to erode the balance provided by *Batson*. In *Purkett*, the Supreme Court reversed the Eighth Circuit for improperly upholding a Batson challenge by combining the second and third steps of the challenge. According to *Purkett*, "[T]he second step of the process does not require an explanation that is persuasive, or even plausible. At this step of the inquiry, the issue is the facial validity of the prosecutor's explanation." 115 S. Ct. at 1771.

The Court's holding in *Purkett* clearly clashes with the basis for the pretext established by *Batson*. Ultimately, the *Purkett* case clearly erased the protection *Batson* provided under the Fourteenth Amendment and the due process provision of the Fifth Amendment.

The crux of this matter may be drawn using a simple parable. That is, when the Court implemented *Batson*, it formulated a "speed limit" for "race-neutral" reasons for striking jurors. Now in *Purkett*, the Court issues a mandate to keep the "speed limit," but take down the "signs".

The Supreme Court's holding in *Purkett* simply ignores reality. Now, without a definitive rule or at least more guidance, the lower courts are implementing contradictory conclusions in matters subject to jury challenges made under *Batson* based on the rationale of *Purkett*. These conclusions are unquestionably contradictory because the precepts which evolved under *Purkett* certainly conflicted with *Batson*.

Batson established the standard for a legitimate reason for exercising the striking of minority jurors. *Batson*, 476 U. S. at 98, n. 20, 106 S. Ct. at 1724, n. 20. Some nine years later this Court stated in *Purkett* that a legitimate explanation is not necessarily one that must make sense, but one that does not deny equal protection. Citing *Hernandez v. New York*, 500 U.S. 352 at 359, 111 S. Ct. 1859 at 1866, 114 L. Ed. 2d 395 (1991).

In the instant case, the Eleventh Circuit clearly demonstrates the danger and uncertainty as to the issue of equal protection in the jury selection process. *Batson* had definitely and explicitly established that a legitimate explanation, legitimate purpose, must, among other aspects, not deny equal protection to the parties. Nevertheless, *Purkett* clearly eroded the Fourteenth Amendment protection entrusted vis-a-vis *Batson*. This Court in deciding *Purkett* found that "legitimate reason" is simply a reason that it does not deny equal protection. *Id.* at 1771.

The Employees in this case urge the Court to draw a definitive conclusion in *Purkett* which merges with the law handed down in *Batson*. To do otherwise serves as an injustice to the Employees, as well as every citizen entitled to equal protection under the United States Constitution.

I.

THE EMPLOYEES CONTEND THAT THEY WERE DENIED EQUAL PROTECTION UNDER *BATSON* BECAUSE THE RAILROAD EXCLUDED THE ONLY MINORITY JUROR UNDER THE DOCTRINE OF *PURKETT*.

The Eleventh Circuit's opinion in this case holding for the United States District Court of Alabama, Docket No. 95-6780, precludes the rights of Employees to equal protection in trial. The Eleventh Circuit ignored the fact that Railroad's counsel in response to the court in explaining his striking of the only minority juror by giving three reasons: "She's fairly young and divorced. She is a circulation manager of a newspaper" (App. C., 15a). Concerning age and marital status, there is no evidence in the record that Railroad's counsel asked any questions of any of the venire panel members. On the question of the only minority juror about being with Thrifty Nickel, Juror Lowe informed Railroad's counsel that "I'm a supervisor over classifieds" (App. C, 12a). Furthermore, the answer to the minority juror's age and marital status was in response to a general voir dire question by the District Court, and not because of inquiry by the Railroad's counsel.

It appears from the record that counsel for the Railroad did not consider his previously given reasons of age and divorce to be legitimate reasons for when the Court asked him if he wanted to explain his strike counsel explained he had one verdict in an FELA case were a circulation manager of a newspaper was involved. Counsel's entire explanation was prefaced around newspaper circulation managers (App. C, 15a). However, the court informed counsel of the fact that the minority juror was not a circulation manager. Counsel then went on to comment that he misunderstood the minority juror's occupation. Even

so, counsel thrust forth with a fourth reason, which had not been previously stated. Counsel finally concluded that he did not like any type of newspaper people. (App. C, 16a).

In fact, counsel says he did not write down she was a circulation manager. In his next answer counsel says he did write it down. (App. C, 16a). The Employees argue that Railroad counsel's reasons for striking the only minority juror were groundless. This is especially true since no effort was made to determine if any of the other jurors were newspaper people. Therefore, the Employees contend the standard of equal protection established in *Batson* was plainly violated. The Employees contend that *Purkett* preserved the equal protection rule of *Batson*. However, the holding of the Eleventh Circuit in this case appears to be saying because of *Purkett* the Supreme Court has negated the standard of equal protection as defined in *Batson*.

The reasons given by the railroad's counsel for the peremptory challenge are not consistent with (1) facts relative to the case; (2) lack of meaningful questions to the challenged juror; (3) disparate treatment — counsel did not ask other panel members the same or related questions; and (4) counsel gave a group bias where the group trait, newspaper people, is not shown to apply to the challenged juror specifically and no effort was made on the part of counsel to apply the group trait to other panel members.

Based on the foregoing, the Employees submit to this Court that they were denied due process. Obviously, the only reason that the sole minority juror was excluded from the panel was because of her race. Thus, three of the four employees were denied equal protection inasmuch as they are minorities. And under the pretext of the law prior to *Purkett*, there was no basis for excluding the minority juror without a race-neutral reason.

Even so, subject to the *Purkett* doctrine, the Employees argue that the Railroad's reason for striking the minority juror was still violative. Clearly, when counsel began shuffling his feet for a reason once he was made aware of his mistake, places a new emphasis on the Court to determine the existence of a race-related juror exclusion.

Thus, the Employees argue that the application of *Purkett* — as it did in this case — by the Eleventh Circuit usurped their equal protection rights.

Nevertheless, the Employees submit that the Eleventh Circuit decision is based on a doctrine espoused in *Purkett* that conflicts with *Batson*. Because of this conflict, the Employees urge the Court to respectfully consider their writ, and that the Court clearly define the Court's holding in *Purkett* as it impacts on *Batson*.

This issue beckons review and the Employees respectfully request this Honorable Supreme Court to hear this matter accordingly.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted,

CHRISS H. DOSS
Counsel of Record
JAMES W. CAMERON
Attorneys for Petitioners
Suite 850, Beacon Ridge Tower
600 Beacon Parkway West
Birmingham, AL 35209
(205) 942-8101

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT FILED AUGUST 29, 1996

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 95-6780
Non-Argument Calendar

D.C. Docket Nos. CV-94-N-1865-S, CV-94-N-2162-S
CV-94-N2212-S, CV-94-N-2266-S

ULYSSES B. COBB,

Plaintiff-Appellant,

versus

BURLINGTON NORTHERN RAILROAD COMPANY,

Defendant-Appellee,

LONNIE SPROLES,

Movant.

RODNEY L. McGHEE,

Plaintiff-Appellant,

versus

Appendix A

BURLINGTON NORTHERN RAILROAD COMPANY, INC.

Defendant-Appellee.

JIMMY D. DILWORTH,

Plaintiff-Appellant,

versus

BURLINGTON NORTHERN RAILROAD COMPANY,

Defendant-Appellee.

JIMMY D. RANDOLPH,

Plaintiff-Appellant,

versus

BURLINGTON NORTHERN RAILROAD COMPANY,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Alabama

(August 29, 1996)

Before HATCHETT, ANDERSON and BIRCH, Circuit Judges.

PER CURIAM:

Appendix A

The appellants in this case raise two issues on appeal: (1) whether the district court's decision to bifurcate the liability and damages issues denied appellants a fair trial in violation of the Seventh Amendment; and (2) whether the appellee's use of a peremptory challenge to exclude the only minority juror from service denied appellants equal protection under the Fourteenth Amendment.

As to the first issue, we conclude that the district court's decision to bifurcate the issues of liability and damages did not violate the appellants' Seventh Amendment rights. Under Federal Rule of Civil Procedure 42(b), the district court has the discretion to bifurcate the issues of liability and damages. *Moss v. Associated Transport, Inc.*, 344 F.2d 23 (6th Cir. 1965).

As to the second issue, the record does not support the appellants' *Batson* challenge. The appellee's counsel articulated a race-neutral reason for his use of a peremptory strike against the minority person on the venire. *Purkett v. Elem*, 115 S. Ct. 1769 (1995). Accordingly, we affirm the district court.

AFFIRMED

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT OF NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION ENTERED AUGUST 29, 1995

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CV-94-N-1865-S

ULYSSES B. COBB,

Plaintiff(s),

vs.

BURLINGTON NORTHERN RAILROAD COMPANY,

Defendant(s).

CV-94-N-2212-S

JIMMY D. DILWORTH,

Plaintiff(s),

vs.

BURLINGTON NORTHERN RAILROAD COMPANY,

Defendant(s).

Appendix B

CV-94-N-2162-S

RODNEY L. McGHEE,

Plaintiff(s),

vs.

BURLINGTON NORTHERN RAILROAD COMPANY, INC.,

Defendant(s).

CV-94-N-2266-S

JIMMY D. RANDOLPH,

Plaintiff(s),

vs.

BURLINGTON NORTHERN RAILROAD COMPANY, INC.,

Defendant(s).

Order

The court has for consideration the plaintiffs' motion for reconsideration under Rule 59, Fed R.Civ.P. The motion will be **Denied.**

Appendix B

The court fully considered the plaintiffs' objection to the use of a peremptory challenge to remove a single black person from the jury at the time it was done. The plaintiffs have suggested nothing that was not before the court at the time it ruled.

The plaintiffs have not suggested in any concrete way how they may have been prejudiced by the decision of the court to permit the defendant's expert witness to remain inside the courtroom and to hear a portion of the plaintiffs' evidence in advance of his own testimony.

Finally, the plaintiffs were allowed a full, fair, and complete opportunity to try all issues related to the claimed liability of the defendant. The decision to bifurcate the trial and to hear issues related to that inquiry only was taken in the interest of judicial economy and the effective use of court, attorney, and client resources. The plaintiffs have not demonstrated how they were prejudiced.

The plaintiffs' motion for reconsideration is, upon due consideration, **Denied.**

Done, this 28th of August, 1995.

s/ Edwin L. Nelson
EDWIN L. NELSON
UNITED STATES DISTRICT JUDGE

APPENDIX C — EXCERPTED TRANSCRIPT OF PROCEEDINGS OF THE DISTRICT COURT, NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION DATED AUGUST 8, 1995

IN THE DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CV-94-N-1865-S,
CV-94-N-2212-S;
CV-94-N-2162-S;
CV-94-N-2266-S;

Birmingham, Alabama

August 8, 1995

9:00 A.M.

ULYSSES B. COBB; JIMMY D. DILWORTH; RODNEY L. McGHEE; JIMMY D. RANDOLPH,

Plaintiffs,

vs.

BURLINGTON NORTHERN RAILROAD COMPANY,

Defendant.

VOLUME I
TRANSCRIPT OF TRIAL
BEFORE HON. EDWIN L. NELSON, and a Jury

Appendix C

APPEARANCES:

FOR THE PLAINTIFFS:	HON. CHRISS H. DOSS 850 Beacon Ridge Tower 600 Beacon Parkway West Birmingham, AL 35209
FOR THE DEFENDANTS:	HON. CHARLES E. SHARP HON. TURNER B. WILLIAMS 2500 SouthTrust Tower Birmingham, AL 35203-3204
COURT REPORTER:	Penny L. Enoch 325 Federal Courthouse 1729 Fifth Avenue North Birmingham, AL 35203

[18] MR. SHARP: Well, the only thing is, you can see in FELA cases, a case such as this, we get into many different areas; different claims of damages, from psychiatric to physical, to all of these — and the economist comes in on each one of these people; the vocational expert comes in. In other words, you only have to have that much liability to open the door for literally days of damage testimony.

Now, the first issue in this case is so simple, and your Honor summed it up in the — in your charge, that it was simply a farmer with a load of pigs made a left turn right in front of this truck. That's a pretty simple issue. And so that — that issue could be tried easily in a day.

So, we have a trial, at the end of the day — that may end the whole thing or it may go on. And so it would be a huge

timesaving. And frankly, if I was on the jury, it would get very confusing to have this little thing about liability, and then you get into all these damage stretches; all of the earning capacity, past and future. And it just goes on and on and on for such a simple thing as you're driving and a load of hogs pulls right across in your face. Now, that is —

THE COURT: You said something appealing to me, one day.

MR. SHARP: Well, I think it can be done.

MR. DOSS: Let me say this: The defendant — counsel for the defendant moved to consolidate, your Honor, and Mr. [19] Sharp has talked very —

MR. SHARP: Eloquently.

MR. DOSS: — learned here, but he knew every bit of this when they moved to consolidate. He hasn't said a thing —

MR. SHARP: I didn't find out about this case until about the time I found to go on the trip. That's all right —

MR. WILLIAMS: The move to consolidate really has nothing to do with the bifurcation motion. The move to consolidate was to try the accident one time, rather than four separate trials.

THE COURT: What would be the situation, Chriss, if we were to ask you to try the question of liability first — why would you not be able to do that — and save all the damages testimony?

MR. DOSS: Well, the thing about it, I was working under the impression that we were trying to do this within a certain number of days, and I have planned the plaintiffs' part with that in mind. It means that I'm going to have to go back and do some readjustment. But, you know, I'm supposed to be able to do that, and I can.

Now, let me say this. I have had an item to come up, your Honor, that I didn't know about until about 6 o'clock yesterday afternoon. My office received word, but I was not there, at a little after 3 that one of the vocational experts that we had subpoenaed and have been talking to — and we knew she had been [20] sick, but we didn't know about the severity and we didn't know she couldn't appear — Lyn Monroe, who is a vocational expert in one of the plaintiff's cases, informed us late yesterday afternoon that she is very ill and in chemotherapy. She's agreed to let us do a deposition, but she says she isn't able to come to court.

I learned about this after I got to my office from another case, after closing time last evening.

MR. WILLIAMS: Back to the motion to bifurcate, then if we try the liability issue first, she comes in on the damage aspect, if you're trying to get a deposition while we're in trial —

MR. DOSS: Well —

MR. WILLIAMS: — make your motion and let the Court rule on that. But the bifurcation, the witnesses for the liability are basically the plaintiffs, who I presume are here; and the State Trooper, who I have talked to several times and so have you, and he's ready to leave Tupelo. It's two hours, two and a half hours from here. He can be here —

MR. DOSS: Well, some of my witnesses I have lined up. I don't know whether I can get them here today or not, because I didn't plan it this way.

THE COURT: What would — you could get them here tomorrow?

MR. DOSS: I think I can have them here tomorrow.

[21] THE COURT: Since I last talked to you, all my cases in Huntsville have gone away. I've got to be up there Wednesday of next week, but I've got Monday and Tuesday that I can — so we can carry the case into next week, if that became necessary. So, we're not as pushed for time as we were. A few settlements, a few summary judgments granted. One lawyer gets sick, so we had to continue the case. But actually, we've got one case left out of 18 that we started with in Huntsville, and we set — that was a nonjury case we set over on the 28th to get out of the way of the jury cases. We did that weeks ago.

Why don't we do this: It strikes me that it makes sense to try the liability issue at this time; and if the jury finds for you, then you still have got the opportunity to present all your damages evidence. If they find for the defendant, then we save — you save a lot of time and we save a lot of time; everybody saves a lot of effort.

Let's do this, why don't we — what have you got in the way of witnesses today?

MR. DOSS: I have the plaintiffs here.

THE COURT: Why don't we go ahead and select —

MR. DOSS: Everybody else, I was planning to have here in the morning.

THE COURT: — why don't we go ahead and get a jury this morning, let you make your opening statements and start putting the plaintiffs on this afternoon, and then have your

* * *

[68] MR. SHARP: Has anyone in your family made a claim for a hearing loss that was caused by being at work on the job?

JUROR ZICARELLI: May I?

MR. SHARP: Yes, sir, Mr. Zicarelli.

A. I think back, my father was an officer in the Union, Steelworkers Union in Ensley. And I don't recall what office he had.

Q. All right, sir. And that's been several years ago?

A. Yes, sir. He's dead now. I guess it's been fifteen years ago.

MR. SHARP: All right, sir. Thank you, sir.

Mrs. Lowe, you stated that you are with Thrifty Nickel. What do you do there?

JUROR LOWE: I'm a supervisor over classifieds.

THE COURT: Can't hear you.

Q. Supervisor on classifieds?

A. Supervisor over classifieds.

MR. SHARP: All right. And, Mrs. Ceravolo, when they were asking you about the card, I believe I heard you, but there was a question coming at that time that you said that you had about a week of comp. Did I hear you say that?

JUROR CERAVOLO: That's right.

Q. And that was a back problem?

A. Back injury. Right.

MR. SHARP: All right. And, Mr. Marshall, how long

* * *

[73] MR. SHARP: No, sir.

MR. DOSS: No, sir.

THE COURT: If you've got *Batson* problems, when you come back, tell Ms. Likos. I only see one — I believe only one black person on the whole panel. If you have a problem with the *Batson*-type situation, tell Ms. Likos and I'll see you out here.

If you want to go outside, feel free to do that. I usually set and chat with the members of the jury.

(In open court, prospective jurors present).

Appendix C

THE COURT: Ladies and gentlemen, they're going to take a few minutes to think about what you've told them, and we're going to sit here. If any of you want to stand and stretch or whatever, feel free to do that.

If you need to use the restroom, the door to the right in that corner down the hall, there are restrooms. Don't wander away, however. And when you come back, please sit in the seats where you are now seated.

(Recess at 11:15 a.m. from 11:30 a.m.)

THE COURT: I'll see you out in the hallway.

(In the hallway.)

MR. DOSS: Your Honor, they have — there are two black plaintiffs and one American Indian, and the only minority on the jury has been struck.

THE COURT: All right. You know, that's a two-step process: The circumstances before a party — I wish we would do [74] away with peremptory challenges, forget this whole thing and do away with them, be a lot more liberal for challenges with cause, and look for real reasons to get rid — and just put the first seven in the box without peremptories.

Now that I'am through preaching, it's a two-step process: The circumstances must indicate, must suggest in some way, that discrimination is a reason for exercising a peremptory challenge. If that is done, the next step is to call upon the side making that challenge to explain it.

Appendix C

What we have here is four plaintiffs, three of whom — two of whom are black, one of whom is an American Indian or Native American, I suppose we're supposed to say now.

MR. DOSS: I believe that's correct. I stand corrected.

THE COURT: But outward appearance, you know, doesn't — looks like any of the rest of us, a cross-section of America. I'm not at all — I'm not sure that creates an inference of discrimination, but let's jump past that for the moment and let me ask you, I assume the defendant struck Mrs. Lowe.

Do you have — do you want to explain why you did that?

MR. SHARP: Yes, sir.

THE COURT: Without any inference of discrimination or otherwise.

MR. SHARP: It's two-prong: She's fairly young and [75] divorced. She is a circulation manager of a newspaper. I, in the past have had two verdicts, one of them in a — well, all right, I had one verdict in an FELA case where there was a circulation manager of a newspaper that I left on there and he came in against me. That same juror, who was a circulation manager of the newspaper came up again and was on — it was on a much, much bigger case. We had a jury psychologist there, which I don't have any confidence in at all, and she says that this circulation manager would not be for me. And I was utterly astounded that she had some knowledge of what she was doing.

So, I don't like newspaper circulation managers.

THE COURT: This lady said she was classification — manager of classified ads.

MR. SHARP: I thought she said circulation. She's a class — I thought she said circulation. I didn't write that down. So she is — she's a classified ad — well, I've not had good luck with any type of newspaper people.

THE COURT: But you thought she was circulation?

MR. SHARP: Yeah, I did. I have that written down, circulation manager.

THE COURT: Mr. Doss, you want to respond to that?

MR. DOSS: I believe that the reason Mr. Sharp gave for the strike is non-relevant. He now admits that.

THE COURT: Well —

MR. DOSS: I would hope that we don't get into certain [76] elements in this case as we discussed in chambers earlier. If we were to, the minority factor could be significant.

THE COURT: Let me see the list.

MR. SHARP: Also, I might add that one of the — one of the plaintiffs, the one they referred to as a Native American, the one that you would never know that he was a Native American unless he told you he was a Native American, he is divorced and the other lady who was divorced on the panel, Ms. Smith, I also struck Ms. Smith. So, I —

MR. DOSS: There was some other divorcees, too. A the lot of divorcees.

MR. SHARP: Who else?

MR. DOSS: I don't remember. Because to me, that's not significant.

MR. SHARP: Well, I got two of them and I also feel when I struck —

THE COURT: Excuse me. I'm going to — I think the reason is sufficient. It doesn't take much. It simply has got to be something that's not discriminatory. I'll take Charlie at his word that he thought she was a circulation —

MR. SHARP: I've got it written down.

THE COURT: — if he thought that, it's as good as if she were. I overrule the objection.

MR. DOSS: We except.

THE CLERK: Is this going to be a seven- or eight-panel

* * *